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PATENT
Customer Number 22,892

Attorney Docket No. 1147-0142

#21
B. V. Webb
10/3/01

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Reissue Application of:)
U.S. Patent No. 5,750,338)
)
Mark L. Collins et al.)
)
Reissue Serial No.: 09/533,906)
)
Reissue Application Filed: March 8, 2000)
)
For: TARGET AND BACKGROUND)
CAPTURE METHODS WITH)
AMPLIFICATION FOR AFFINITY)
ASSAYS)

Group Art Unit: 1655

Examiner: D. Johannsen

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REISSUE LITIGATION BOX
Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

NOTICE OF RELATED LITIGATION

As indicated in the July 16, 2001, submission of the papers from the related litigation, Gen-Probe, the Protestor, filed a motion for partial summary judgment which the District Court granted. Also as indicated in the July 16, 2001 submission, the Patent Owner, Vysis, Inc., filed a motion for entry of final judgment so that the Court's decision could be appealed. The Court has now denied that motion, and the Patent Owner is bringing these papers to the attention of the Office. Specifically the Patent Owner submits copies of:

- the Motion for Entry of Final Judgment Under Rule 54(b), by Vysis, Inc., and the accompanying Notice of Motion, Memorandum of Points and Authorities in Support Thereof,

Doc. No. 19674

09533906-021202

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Declaration of Thomas Banks in Support Thereof, Application for Expedited Briefing and Hearing, and Proposed Stipulation re Expedited Briefing and Hearing;

- Gen-Probe's Opposition to the Motion, and the accompanying Declaration of J.

Christopher Jaczko in Support Thereof, Declaration of William Bowen in Support Thereof, Notice of Lodgment in Support thereof;

- Order Granting Application for Expedited Briefing;

- Vysis's Reply Memorandum, and the accompanying Declaration of Thomas H. Banks in Support Thereof, Notice of Lodgment of Case Authority in Support Thereof; and

- Order Denying Entry of Final Judgment.

As with the motion for partial summary judgment, the Court's denial of entry of final judgment should have no effect on these reissue proceedings. Indeed, both Gen-Probe and the District Court expressly recognized in these papers that the grant of partial summary judgment does not relate to the validity of the '338 patent in reissue. See Gen-Probe's Opposition, page 3, paragraph 4, lines 1-2; Order, page 3, second paragraph, lines 1-2. Moreover, because the Court's decision is not embodied in a final judgment, it remains an interlocutory decision that can be modified by the Court at any time before entry of final judgment.

The Patent Owner will continue to keep the PTO apprised of any developments in the related litigation.

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If there are any fees due with the filing of this Notice not already accounted for, please charge any additional required fees to our deposit account 06-0916,

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: August 24, 2001

By: Jean Burke Fordis
Jean Burke Fordis
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